MISCELLANY.

DEVOLUTION OF REAL PROPERTY OF A DISSOLVED CORPORATION. — An interesting question is presented by a recent decision of the Texas Supreme Court. A Louisiana corporation owned land in Texas. Though owing no debts it was dissolved by the voluntary act of the stockholders, three of whom were appointed commissioners to settle the corporate affairs. These three brought an action of trespass in Texas to try title to the land belonging to the corporation. It was held that though their appointment was not evidenced by such an instrument as was required for the conveyance of land in Texas, yet they could maintain the action in their character as stockholders, since on the dissolution of the corporation the title passed to the stockholders as tenants in common. *Baldwin* v. *Johnson*, 65 S. W. Rep. 171.

The common law rule has been generally stated to be that land of a dissolved corporation reverts to the grantor. 2 Mor., Corp., sec. 1031. A reference to the history of the law and to the only decided case on the point shows, however, that if the stockholders cannot claim, the property escheats, instead of reverting to the grantor. Gray, Perp., secs. 44–51; *Johnson* v. *Norway*, Winch, 37. Personal property, according to the generally stated common law rule, also goes to the sovereign as *bona vacantia*. *In re Higginson and Dean* [1899], 1 Q. B. 325. These questions, however, have rarely arisen for a decision, and no American case squarely in point has been found. Texas, like many other states has a statute providing that if a person dies without heirs the property shall escheat to the state. Construing this statute, together with the statutes as to descent and those expressly providing for the appointment of receivers and trustees for dissolved Texas corporations, it seems clear that it was only meant to apply to natural persons. The solution of the question to whom the property of the dissolved corporation should go depends, therefore, upon common law principles. And this is true even though the statute applies to artificial persons; for if the stockholders can be held to succeed to the corporate property, the statute obviously has no application.

The American courts have been very alert in imposing a trust on the property of dissolved corporations for the benefit of creditors and shareholders. *Bacon* v. *Robertson*, 18 How. 480. Such a trust, while working justice where a receiver holds the property, would be unenforceable against the state, even assuming that the state would not take free from equities in such cases. See 12 Harv. L. Rev. 558. In the case of a foreign corporation like the present, however, where no one has been appointed who can hold the legal title, justice can only be meted out by giving the property to the stockholders.

Whatever the common law doctrine may be, it had its origin in days of municipal and ecclesiastical corporations, when modern business corporations with stockholders were unknown. The rule has often been called both obsolete and odious. Ang. & A., Corp., 779 a. Considering, therefore, that the doctrine has never been affirmed in America, that it is wholly inapplicable to modern conditions, and that it has been doubted by almost every American text-writer, it seems not going too far to adopt a more liberal and just rule in

its place. In a note to *In re Higginson and Dean* it is said, "The dissolved corporation was merely a legal name for the members of whom it consisted. The debts due to the corporation were therefore in substance, though not in form, debts due to these members. On the corporation being dissolved these debts may be considered to be in reality and in conscience the property of the persons who then constituted the corporation. But this natural justice cannot be expressed in any known terms of law or equity." 15 L. Quart. Rev. 115. In other words, if the property goes to the state a mere technicality is to stand in the way of the rights of the stockholders, and this technicality is to be strictly applied in a branch of the law, which is full of anomalies, and which is constantly being moulded to meet new conditions. Modern corporate existence would be impossible without stockholders; the capital is furnished by them, and the property should "in reality and conscience" belong to them when the corporation is dissolved, subject of course to the rights of creditors.—*Harvard Law Review.*

THE LAWYER GROWN GRAY.—We are indebted to *Cases Cited* (San Francisco), for the subjoined extract from a recent address delivered before the Kentucky Bar Association, by former Senator Lindsay, of Kentucky. The subject of the address was "The Lawyer in Kentucky and Elsewhere."

In the course of his remarks Judge Lindsay said: "In an old member of the profession—one who has grown gray in the service—there is a rich unction of originality, that brings him out from the ranks of his fellow-men in strong relief. His habitual conversancy with the world in its strangest varieties, and with the secret history of character, gives him a shrewd estimate of the human heart. He is quiet and unapt to be struck with wonder at any of the actions of men. There is a deep current of observation running calmly through his thoughts, and seldom gushing out in words; the confidence which has been placed in him, in the thousand relations of his profession, renders him constitutionally cautious. His acquaintance with the vicissitudes of fortune, as they have been exemplified in the lives of individuals, and with the severe affliction that have 'tried the reins' of many, known only to himself, makes him an indulgent and charitable apologist of the aberrations of others. He has an impregnable good humor, that never falls below the level of thoughtfulness into melancholy. He is a creature of habits, rising early for exercise; temperate from necessity and studious against his will. His face is accustomed to take the ply of his pursuits with great facility, grave and even severe in business, and readily rising into smiles at a pleasant conceit. He works hard when at his task, and goes at it with the reluctance of an old horse in a bark mill. His commonplaces are quaint and professional; they are made up of law maxims, and first occur to him in Latin. He measures all the sciences out of his proper line of study (and with these he is but scantily acquainted) by the rules of law. He thinks a steam engine should be worked with due diligence and without laches; a thing little likely to happen, he considers as *potentia remotissima*, and what is yet not in existence, or in *esse*, as he would say, is *in nubibus*. He apprehends that wit best that is connected with the affairs of the term; is particularly curious in his anecdotes of old lawyers, and inclined to be talkative concerning the amusing passages of his own professional life. He is, sometimes, not

altogether free of outward foppery; is apt to be an especial good liver, and he keeps the best company. His literature is not much diversified, and he prefers books that are bound in plain calf to those that are much lettered and gilded. He garners up his papers with a wonderful appearance of care, ties them in bundles with red tape; and usually has great difficulty to find them when he wants them. Too much particularity has perplexed him; and just so it is with his cases—they are well assorted, packed and hid away, in his mind, but are not easily to be brought forth again without labor. This makes him something of a procrastinator, and rather to delight in new business than finish his old. He is, however, much beloved and affectionately considered by the people."

EXPULSION FROM AN INSTITUTION OF LEARNING WITHOUT FORMAL HEARING. — The opinion rendered at the Special Term of the Supreme Court, Kings County, in May, 1902, in *Goldstein* v. *N. Y. University* — which case attracted a great deal of newspaper comment at the time of its appearance in court — has recently been reported (77 N. Y. Supp. 80). The substance of the decision is stated in the syllabus:

"Where a day attendant on law lectures at a university has paid his tuition, he may, though a minor, compel the university to perform its contract, where he is excluded from the lectures for having lied to the dean of the law faculty, when he was not notified of the charge, nor afforded any opportunity to be heard in his defense, or to confront the adverse witnesses, or know what they had said in his absence."

The following is from the opinion:

"It appears that a letter, signed with the plaintiff's name, was handed by the plaintiff, in the school building, to another male student, to be delivered to a young lady to whom it was addressed, a fellow student, and it was so delivered. The letter was entirely respectful. The most that can be said of it is that it was unconventional, the young lady being a stranger to the plaintiff.

. . . . . .

"The receipt of this letter was reported to the dean of the law school, who interrogated the plaintiff on the subject, when the plaintiff stated that he had neither written nor signed the letter; that his name had been signed by some one else, without his knowledge; that the letter had been given to him by another student, with a request that he deliver or forward it through some other person to the young lady, which he had done, being entirely ignorant of its contents; in short, that a practical joke had been played upon him. The faculty thereupon convened, and made an investigation, and, without notifying the plaintiff that he was charged with having lied, or affording him an opportunity to be heard in his defense upon such charge, or to confront the witnesses against him, or to know what they had said in his absence, found him guilty of having lied in making the statement above mentioned, and for that reason, and no other, expelled him. It was not thought that the writing and sending of the letter, if done by the plaintiff, was any ground for expulsion, and it is not so claimed by the defendant. That question is not in the case. The defendant's proposition is that lying to the dean upon his interrogation was ground for expulsion, and that the faculty had the power, for the purpose of ending the plaintiff's rights, to determine conclusively that he had been guilty of such lying.

I said upon the argument that I was not prepared to hold that such lying was not ground for expulsion, and I have seen no reason to change my impression. The letter had been delivered upon the school premises, and, however innocent, it was a proper subject to be taken notice of by the dean if he saw fit, and a falsehood told in answer to his reasonable interrogation was, I think, a breach of the implied undertaking of the plaintiff for good conduct, which formed part of the contract between the parties. But no evidence is offered of the plaintiff's actual guilt. The defendant relies entirely upon its proof that the faculty has tried and determined his gilt. That is not enough. The plaintiff's right to relief stands unimpeached, and the injunction must be continued."

Elsewhere in the opinion it is stated that "it is the theory of the defendant that the faculty of the law school had the power, judicial in character, to inquire and conclusively determine, for the purposes of a rescision of the contract by it, that the defendant was guilty of such breach" of the contract, or of such acts as would authorize his expulsion, and that they did so determine. Recognizing the force of the argument in favor of the injunction, it, nevertheless, would seem that there is a great deal to be said on the other side. What the Special Term in effect did was to apply to the faculty of an institution of learning the same rules and principles that govern when it is attempted to expel a member of a club or a commercial exchange. As applied to one of the last named bodies the policy adopted by the court doubtless would be correct. [See *Loubat* v. *LeRoy*, 40 Hun, 546; note to the same case at Special Term, 15 Abb. N. C. 1). With regard to a member of a club or exchange, it must be remembered that he is one of the organic constituents of the institution itself. It is in the highest degree just and important that a person so interested should have notice of the hearing, and the right to be heard in its full substantial sense, before he may be legally expelled.

It is doubtful, however, whether as to a mere student or attendant upon lectures of instruction, a more logical and pertinent analogy is not to be found in the law governing the rights of persons who have purchased tickets for theatres or other public entertainments. The proprietor of a theatre or lecture hall is, in contemplation of law, a mere licensor, and the permission to attend is a revocable license.

This latter analogy would seem to be especially applicable to a mere daily attendant on law lectures, and as far as the general rights of faculties of institutions of learning are concerned, it would seem that such analogy might well be extended, rather than the one derived from the rights of membership in a club or exchange. Under the policy laid down by the present decisions we do not see why any student at a school or college may not insist upon the right to a formal hearing upon charges which may lead to his expulsion. We deem it, on the whole, proper and expedient that the faculties of such institutions should have the power of discretionary expulsion of students. Of course, an aggrieved student will always have any remedy that the laws of defamation afford. Subject to such protection, we do not believe that the power to expel, without a formal hearing, will in the long run be abused. Indeed, it is always to the interest, pecuniary and otherwise, of institutions of learning and instruction to attract and retain students, rather than repel or expel them.—*New York Law Journal.*

BANK CHECKS AS AFFECTED BY DRAWER'S DEATH.—When the drawer of a bank check dies before the check is presented for payment, the effect upon the positions of the holder and of the bank presents a question which has been discussed now and then text-writers, but has seldom come up in court. It seems to be universally admitted that where the bank pays the check in ignorance of the death, the payment will stand and the bank will be allowed to charge it up against the drawer's account. 2. Pars. N. & B. 82; Morse on Banks, sec. 400, n. 2. But if the bank have notice of the death before paying, opinion differs as to the course it should pursue; the question being closely associated with those of the right of the holder to sue the bank, and of the drawer to stop the payment, and depending with them on the legal significance of a check. This has been differently conceived of by different courts, and the differences are so radical that until they are extinguished the law of checks in many important particulars must vary according to the jurisdiction.

In a number of the States the courts have treated a check as an assignment, an out-and-out transfer of the depositor's credit, whereby the depositor steps out as to the amount of the check and the payee takes his place. *Munn* v. *Burch* (1860), 25 Ill. 21; *Fogarties* v. *State Bank* (S. C. 1860), 12 Rich. 518. The consequence is that as soon as the assignment is complete the payee has a right to sue the bank if it refuses to pay, and the drawer of the check cannot interfere with this right. In some of the States the assignment is complete when the check is given, and then the drawer can never stop payment, *Union Nat. Bank* v. *Oceana County Bank* (1875), 80 Ill. 212; in others it is not complete until presentation, and there the drawer can stop payment up to that time. *Tramell* v. *Bank* (1890), 11 Ky. Law Rep. 900.

The majority of jurisdictions have rejected the theory that a check works an assignment. Some courts say a check is a bill of exchange, and some that it is not, but most agree that it gives the holder no right against the bank until it has been certified or paid. The New York courts and the English courts put this on the ground that the check is a bill of exchange and as such gives no right against the drawee until accepted. *Chapman* v. *White* (1852), 6 N. Y. 412; *Hopkinson* v. *Forster* (1874), L. R. 19 Eq. 74. The United States Supreme Court on the other hand denies that it is a bill, but reaches the same result. *Merchants Bank* v. *State Bank* (1869), 10 Wall. 604, 647; *Bank of the Republic* v. *Millard* (1869), 10 Wall. 152. The question is only one of names, however, for where the check is called a bill it is admitted to be only one species, and to differ from the ordinary bill in several important respects; for instance, the drawer is not entitled to notice of dishonor, and certification, unlike acceptance, discharges the drawer unconditionally. The holder in either case having no right to sue the bank, it follows that the drawer is entitled to stop the payment. *Dyker* v. *Leather Manufacturer's Bank* (1845), 11 Paige, 612.

Neither the assignment theory nor the bill of exchange theory seems entirely satisfactory. There is another which may be better and is certainly not forced. When the depositor opens an account there is a contract implied in fact under which the bank is to repay its debt by payment to those persons whom the depositor shall afterwards designate. The check then is the designation of the person, and as soon as it is presented the bank comes under a contract duty to the drawer to pay it. Where, then, a person benefited under a contract to which he

is not a party is allowed to sue upon it, the holder might be allowed to sue the bank. This reasoning has been adopted in at least one State, though expressly rejected in another. *Roberts* v. *Austin* (1868), 26 Iowa, 315; *Cincinnati R. Co.* v. *Bank* (1896), 53 O. St. 117. Where, further, the beneficiary's right, once vested, cannot be prejudiced by the subsequent acts of the parties to the contract, of course the drawer of the check could not stop payment of it. If, however, the law gives the third party no rights whatever under the contract, the drawer could stop the payment.

The results which follow, under these various principles, from the drawer's countermand would seem to follow also from his death. Where the check works an assignment as soon as delivered to the payee, the drawer's death can have no effect. *Lewis* v. *International Bank* (1883), 13 Mo. App. 202; *McGregor* v. *Loomis* (1856), 1 Disney, 247 (before it was decided that a check is not an assignment in Ohio). But where the assignment is not complete until the check is presented, the bank's knowledge of the drawer's death ought to take away its right to pay, as though another assignment had been first notified to it; because as soon as the drawer is dead, the bank knows that his personal representatives are entitled to his claim. A Louisiana case, taken in connection with a *dictum* of the same court, seems to point to this result, although the precise question was reserved. *Bernard* v. *Bank* (1891), 43 La. Ann. 50; *Burke* v. *Bishop* (1875), 27 La. Ann. 465. If the check is a designation under a contract which gives a third party an indefeasible right to sue on the contract, the drawer's death can have no effect. If the check is a bill of exchange, perhaps the drawer's death would not revoke the order; for it has been held that a drawee who accepted and paid a bill after he knew of the drawer's death might charge it up against the drawer's administrator. *Cutts* v. *Perkins* (1815), 12 Mass. 206. But this is not necessarily a precedent for the case of a check; for those courts which declare a check to be a bill of exchange admit that in many respects it is governed by quite different principles, and though the New York court says that a check is a bill, there is a New York case which held that a draft drawn on a bank where no deposit was made until afterwards was revoked by the death of the drawer. *Fordred* v. *Seamen's Savings Bank* (1871), 10 Abb. Pr. N. S. 425.

Finally, what should be the rule if the check is neither an assignment nor a bill of exchange, and if the holder gets no right to sue on the contract between the bank and the depositor? The question here is of the right of the bank to pay the check and charge it up to the drawer's account. The trend of all the authorities is against the existence of such a right: *Fordred* v. *Seamen's Savings Bank*, *supra*; *dicta* in *Second Nat. Bank* v. *Williams* (1865), 13 Mich. 282; *National Commercial Bank* v. *Miller* (1884), 77 Ala. 168; and a late case in Kentucky holds that a check for more than the amount of the deposit is not an assignment, as checks ordinarily are in Kentucky, and is improperly paid after the bank knows of the drawer's death. *Weiand's Adm'r* v. *State Nat. Bank* (1901), 65 S. W. 617. Principle seems to be on the same side. The author of a recent paper on this subject argues that the drawer's death can make no difference because the check is merely a direction to the bank to do an act which will be the bank's act and not the drawer's; that this direction once made is complete unless actively revoked; and that the drawer's continued existence is therefore not necessary, as it would be for the creation of a contract or for an

act of agency. 14 Harv. L. Rev. 588. But this reasoning, it is thought, rests on half-truths only. While the payment is the bank's own act and not the drawer's, it is, if properly made, charged against the drawer's account; and the drawer's death necessarily substitutes the personal representative, as the one who alone has the right to direct a payment which the bank may charge against the account. This is the kernel of the matter. As soon as the depositor dies his debts and credits pass to his personal representatives, and the balance of assets go through them to those who may be entitled. New parties own the deposit, and the bank, knowing this, would have no light to create a new charge except on their order. The author of the paper referred to above argues here that the order of the drawer survives as the order of the personal representative; because "if it were not his order he could not countermand it, as no one can countermand an order not his own, but of course the personal representative of the deceased drawer can stop payment of the check by notice to the drawee not to pay it." P. 593. Such an argument begs the question, by assuming that the personal representative countermands the old order as the maker of it, rather than nullifies it by showing that he is the only person entitled. The situation is simply this, that the drawer's death has left his order a dead letter, and the bank's right to act under it is gone.

Another reason often given for the view that the drawer's death revokes the check is that it ends the bank's authority—"by the demise of the drawer his mandate to his agent, the bank, is revoked." *Burke* v. *Bishop, supra.* At first sight this language seems to show a misunderstanding of the relation of bank to depositor, which is not that of agent and principal, but of debtor and creditor; and accordingly it has been criticised in the above mentioned paper and in Morse on Banks, sec. 400. Its use is so common, however, that it may represent what is a real step in the theory of payment of a check. May it not be that a check is a call for the repayment of so much money to the depositor, and then a direction to pay it over as the depositor's agent?

The general question here discussed could not arise in England, where the Bills of Exchange Act of 1882 provides that "a banker's authority and duty to pay are determined by notice of the customer's death." Under the Massachusetts statute the check is not revoked by the death of the drawer if presented within ten days of its date. Mr. Crawford, in his annotated edition of the New York Negotiable Instruments Law, p. 114, mentions that a similar provision was suggested for that statute, but was rejected. By sec. 321 a check is a bill of exchange except as otherwise provided, but it has not been decided whether this brings it within the doctrine of *Cutts* v. *Perkins, supra.** The fact that the bank is always safe in refusing payment after the death of the drawer, except in jurisdictions where the holder is allowed to sue, explains the absence of authority. The question still remains, both in the United States and in England, what would be necessary to charge the bank with notice of the drawer's death. In the recent Kentucky case the administrator himself gave notice.†—*Columbia Law Review.*

*[By sec. 189 of the Neg. Instr. Law, a check is declared not to operate as an assignment until certified.—EDITOR VA. LAW REGISTER.]

†[Mr. Daniel's view is that the death of the drawer does not revoke the authority of the bank to pay the check, even where it has notice of the death. This position is defended at some length, in a note to sec. 1618 b of his work on Negotiable Instruments.—EDITOR VA. LAW REGISTER.]

RECENT ACTS OF THE GENERAL ASSEMBLY.—We print below a synopsis of the general laws passed by the Virginia legislature, which met in December last. The figures in brackets refer to the pages of the Session's Acts of 1901–02:

Adulteration of food.—Act to prevent adulteration of bran, millfeed, shipstuff etc. (p. 378).

Animals—trespass by.—Amending Code, sec. 2042, with respect to measure of damages, and giving a lien on the animals, etc. (p. 579).

Certificate of acknowledgment.—1. Validating certificates heretofore made by officials after expiration of their terms of office (p. 43).

2. Validating certificates heretofore made by trustees in deeds of trust (p. 115).

Both of these acts are unconstitutional, in so far as they affect rights already vested at the date of their passage—*Merchants Bank* v. *Ballou*, 98 Va. 112.

3. Requiring notaries who take acknowledgments to state when their terms of office expire (p. 147). The idea is excellent, but why confine it to notaries?

Chain-gangs—penalty for escape or attempts (p. 577).

Chancery practice—petitions.—Amending a previous act authorizing petitions in chancery to be filed in vacation—the amendment requiring leave of the court or judge (p. 285).

Chancery practice—reinstating cause.—Amending Acts 1899-00, p. 582, by the further provision that the cause may be reinstated after final decree for purpose of directing a conveyance to a purchaser, as well as of appointing a commissioner to convey, where a former commissioner dies or becomes incapacitated before executing the conveyance (p. 384).

Chancery practice—vacation causes.—Amending Code, sec. 3427, as amended, with respect to submitting causes in vacation. The new Act permits such consent "in person or by counsel, next friend or guardian *ad litem*"; dispenses with consent as to any defendant summoned by publication, who has not appeared; and apparently, dispenses with the former provision that the judge shall certify the fact of such consent to the clerk (p. 730).

Chancery practice—judicial sales—proceeds insufficient to pay taxes and other assessments.—Amending previous legislation (p. 731).

Children—destitute and depraved—commitment to reformatories, etc.—An elaborate act for the protection, care, support and reformation of destitute, depraved or neglected children, by committing them to charitable and benevolent societies (p. 696).

Children—incorporating societies for the care and protection of (p. 406). The act not only provides a general law for the incorporation of societies for the care, maintenance and protection of children, and to prevent cruelty to them, but provides also for the incorporation of benevolent and charitable societies generally. See *infra*, "Religious Trusts."

Clerks' offices—office hours.—Amending sundry acts amendatory of Code, sec. 3179. By the new Act, clerks' offices are to be open to the public every day, during reasonable business hours, except Sunday—thus eliminating the special provisions in a former amendment, requiring the clerks' offices in certain named cities and counties to be closed on legal holidays. See criticism in 7 Va. Law Reg. 74–75.

Coal—regulating sale of (p. 292).

Concealed weapons.—Permitting motormen and conductors, operating railways in *counties*, to carry (p. 56).

Conservators of the peace for watering places, colleges, etc.—Amending Code, secs. 3929 and 3930, by extending its provisions to "manufacturing plants" (p. 372).

Corporate charters—fees on.—Amending previous legislation (p. 589).

Corporate charters—fishing companies—insurance companies—street railways.—Amending Code, sec. 1145, by placing certain restrictions on companies engaged in taking fish in the public waters of the state for fertilizer purposes (p. 762).

While the evident purpose of this act was only to affect fishing companies, the draughtsman overlooked a previous amendment to sec. 1145 (Acts 1895-96, p. 101, to which no reference is made), by which the courts were prohibited from chartering fire and life insurance companies, and street railway companies—the result of this inadvertence being that this prohibition is omitted from the latest Act. A clause in the earlier amendment, validating charters previously granted to street railway companies, is also omitted—as is also a proviso that the act shall not be construed as authorizing a street railway, operating under a court charter, to exercise the powers of eminent domain.

A legislator should know the old law before attempting to draught a new one. It is suggested, with deference, that every member be supplied, at public expense, with a Code, and especially with Pollard's Supplement. Some one has well said that a careless legislator in stopping a small leak, often causes the overflow of meadows that he knew not of.

Courts-martial—organization and regulation of.—Amending Code, sec. 374 (p. 808).

Courts—special terms—judges exchanging circuits.—Amending Code, secs. 3062 and 3065 (p. 631).

Criminal law—housebreaking.—Amending Code, sec. 3706, with respect to the penalty (p. 567).

Criminal law—killing or injuring animals of another—Amending Code, sec. 3724 (p. 687).

Damages for violation of a statute—joining claim for penalty with claim for damages.—Amending Code, sec. 2900, by adding the right to unite in a single action of trespass on the case, a claim for a statutory penalty with a claim for damages resulting from violation of a statute (p. 385). This amendment is doubtless intended primarily to cover claims against telegraph companies for failure to transmit or deliver messages, in view of the recent decision in *Conelly* v. *West. Union Tel. Co.*, 7 Va. Law Reg. 704, denying the right to recover damages for mental suffering.

Delinquent lands—applications to purchase.—Requiring all pending applications to be perfected within sixty days from March 25, 1902, else proceedings to be void (p. 319).

Delinquent lands—deed to purchaser.—Amending Code, sec. 665 (p. 779).

Delinquent lands—power of clerks.—Permitting clerks to receive taxes on delinquent lands in certain cases (p. 550).

Dogs—general "dog-taxing" act.—The act provides for a fund to be raised from a tax on dogs, out of which owners of "sheep, lambs or other stock" are to be paid all damages caused by dogs (p. 400).

Quære, whether the words "other stock" would include all other stock, or

would, under the rule of *ejusdem generis*, be confined to animals of like kind, (whatever they may be). See *Peate* v. *Dicken*, 1 Cr. M. & R. (1 Exch.) 421, where the words "tradesman, artificer, workman or any person whatsoever," were held not to apply to attorneys. See also, *Lynchburg* v. *N. & W. R. R. Co.*, 80 Va. 237, and *Richmond Ice Co.* v. *Crystal Ice Co.*, 99 Va. 239.

Elections—preservation of order at the polls (p. 386).

Eminent domain—condemnation—Amending Code, sec. 1101, so as to forbid condemnation or acquisition of cemeteries or burial grounds (p. 366).

Eminent domain—condemnation.—Amending Code, sec. 1079, by the added provision that if the notice describe an interest or estate in the land less than the fee simple, no greater interest or estate shall pass than is described (p. 429).

Examiner of records—erroneous assessment.—Amending previous acts, in connection with correction of erroneous assessments made by examiner (p. 574).

Expectoration in street-cars prohibited (p. 702).

Fees of officers—Code, sec. 3531, amended (p. 719).

Fellow servants.—"Fellow Servant Act"—applicable to railroad companies only—making neglect or default of (1) a *superior servant*, or (2) of a *co-employee engaged in another department*, or on *another train*, or (3) of a co-employee in charge of a *switch*, *signal point*, or *locomotive*, or (4) of a co-employee charged with *dispatching trains*, or *transmitting telegraphic* or *telephonic orders*. Knowledge of defects is not of itself a bar to recovery. No waiver of the statute by contract is permitted. Rules of contributory negligence to apply, save as thus modified (p. 335).

This act makes radical changes in the law of master and servant, so far as concerns railroad companies. See article elsewhere published.

Fences.—Amending Code, sec. 2038, defining a lawful fence (p. 284).

Fire insurance companies—combinations to control rates.—Repealing Act of March 1, 1898, prohibiting such combinations (p. 729).

Foreign insurance companies—regulations concerning taxation of (p. 738).

Health—state, county and city boards of.—Amending sec. 13 of Act of March 7, 1900, with respect to prevention of contagious and infectious diseases (p. 422.)

Holidays—legal—Amending Code, sec. 2844, and amendments, by adding May 30 (Confederate Memorial Day) to the list of existing holidays. A clause is also wisely inserted declaring that nothing in the act shall be deemed to alter or repeal any provision of the Negotiable Instruments Law (p. 581).

Homestead exemption. — Amending Code, sec. 3650 (sub-sec. 6), by adding *potatoes* and *fowls* to the list of exempt articles (p. 48).

Husband and wife—witnesses for and against each other.—The purpose of this Act is to cure the evils of previous bungling legislation on the subject. The effect of the new Act is to make husband and wife competent witnesses for or against each other,

(1) *In all civil cases*, except

(a) In proceedings by creditors to set aside voluntary or fraudulent conveyances from one to the other;

(b) Where, under sec. 3346 of the Code, one consort is incompetent to testify because of the death, insanity etc. of the other party to the transaction, then the consort of either party is likewise declared incompetent.

(c) In divorce proceedings, except where the ground of the suit is desertion or cruelty.

(2) *In criminal cases,* husband and wife are competent to testify
  (a) In favor of each other—and compellable to do so.
  (b) Against each other—but only by consent of both. But if one be examined in behalf of the other, the one so examined may be compelled to testify against the other.
(3) In no case, civil or criminal, may either consort, without consent of the other, disclose communications made by one to the other during the marriage—except in a criminal proceeding for an offense committed by one against the other (p. 798.)

Infants' estates—where amount is under $100—Providing that where an infant is entitled to a fund from the sale of lands or otherwise, or as distributee, and the amount is less than $100, it may be paid over directly to the infant; or if he be of such tender years as to be incompetent to handle it, it may be paid to one of his parents for his benefit (p. 812).

Judgment liens.—Amending Code, secs. 3567, 3570 and 3576 (p. 427).

The scope and particulars of this amendment were stated and commented upon at length in 7 Va. Law Reg. 830, by Mr. Bryan, associate editor, who was the draughtsman of the amendment.

The new Act retains the amendment of 1897-98, p. 507, fixing the priority of confessed judgments—though no distinct reference is made to that amendment, either in the title or body of the new Act.

Other important changes are: (1) Abolition of the ancient rule that the lien of a judgment *relates back* to the first day of the term. But no priority is to be given to one judgment over another, where both suits were matured and ready for trial at the commencement of the term. (2) Abolition of the *days of grace* heretofore given for the docketing of judgments. Under the new provision judgments are placed on the same footing with deeds of trust, and are declared not to be liens as against *bona fide* purchasers for value, *until and except from the time they are duly docketed.* (3) Plaintiff to be entitled to an abstract of the judgment *immediately upon its rendition.*

Justices of the peace—executions—return of papers to clerk's office—fees.—Amending Code, sec. 2949, by the added provision that the justice shall return to the clerk's office an *abstract of every judgment* entered by him, together with all the papers in the case—and providing for the collection and payment of the clerk's fees (p. 371.)

The title of this act is misleading, viz., "to amend and re-enact sec. 2949, ch. 140, of the Code of Virgtnia, *in reference to the mode of collecting certain clerks' fees.*" It is sufficient, in amending the Code, that the title contain the number of the section to be amended without other statement of its object (*Brown's Case,* 91 Va. 762), but *quaere,* whether if the title undertake to express the object in terms, it must not express it truly?

Lands of persons under disability.—Amending Code, secs. 2616 and 2620, by conferring jurisdiction on courts of chancery to authorize the mortgaging of the lands of infants and lunatics, for betterment purposes (p. 594). This provision seems eminently wise and the need thereof has long been felt.

Liquor licenses—regulations concerning (p. 775).

Oysters—regulating the taking of (p 379).

Partnership associations.—Amending Code, sec. 2878, in several important particulars, as pointed out in 7 Va. Law Reg. 880 (p. 181).

Pensions—general pension Act (p. 472).

Plumbers—regulating licenses to (p. 360).

Practicing law—clerks, sheriffs etc.—Restoring Code, sec. 3199, to its original form, so as to restrict the prohibition to the courts of which such officials are officers, but increasing the penalty for its violation (p. 758).

Public officers—Amending Code, sec. 164, with respect to State officers holding Federal positions (p. 52).

Public roads—opening new road.—Amending Code, sec. 947 (p. 369).

Railroads—changing location.—Amending Code, sec. 1089 (p. 790).

Religious trusts—permitting churches to receive property by deed or will.—Amending Code, secs. 1398, 1402, 1403 and 1404, by declaring that "no gift, grant or bequest" [was *devise* purposely omitted?] to a church shall be void for insufficient designation of the beneficiaries or objects, in any case where lawful trustees of such church are in existence, or such trustees can be secured under sec. 1399. If the objects of the trust are too uncertain for a court of chancery to enforce them, the property shall pass to the trustees to be applied, with the approval of the governing body of the church, to such church uses as the trustees may determine (*cy pres?*).

The amount of real estate to be held by any congregation is limited to two acres in a city or town and seventy-five outside; personal property is limited to the aggregate of $30,000 (p. 336).

This act seems to eliminate the the vicious and confessedly erroneous doctrine of *Gallego* v. *Attorney General*, 3 Leigh, 450, so far as concerns gifts by will or otherwise, to *religious congregations*, within the limits mentioned. But confined, as it is, to religious trusts only, it is too narrow in its scope. It should be extended to charitable trusts generally. See EDITORIAL.

Registry of deeds—indexing.—Amending Code, sec. 2505, by requiring the clerk to index deeds as soon as received, in a separate book, to be known as "daily index of receipt of deeds for recordation" (p. 304).

The amendment does not go far enough. Indexing should be essential to valid recordation, so far as *bona fide* purchasers are concerned. It is not now essential, as it is in the case of docketed judgments. *Va. B. & L. Co.* v. *Glenn*, 99 Va. 460; 2 Va. Law Reg. 620.

San José scale—act to eradicate (p. 378).

Sheriffs—fees of.—Fixing compensation for guarding juries in criminal cases (p. 425).

Security companies.—Amending previous regulations, with respect to depositing securities with State treasurer (p. 356).

Taxation—of debts, corporate shares, etc.—Amending sec. 8 of the general Taxing Act of March 6, 1890 (p. 824).

Taxation of ground rents (p. 827).

Taxation of railways and canal companies.—Amending sec. 20 of the general Taxing Act of March 6, 1890 (p. 805).

Tax on seals—revenue stamps.—Amending sec. 16 of the general Taxing Act of March 6, 1890, (as amended by Acts 1899-1900, p. 175) with respect to the use of revenue stamps on documents to which an official seal is attached (p. 785).